

Delaware Professional Licensing Review Committee  
June 16, 2016  
9:00 a.m.  
Senate Hearing Room, 2<sup>nd</sup> Floor, Legislative Hall, Dover, DE

**MEETING MINUTES**

**Approved 8/23/2016**

**Committee Members Present:** Secretary Jeffrey Bullock, Chair; Judy Diogo, Donald Fulton; Senator Gerald Hocker; Debbie Gottschalk, on behalf of Secretary Rita Landgraf; Charles Madden; Nello Paoli, Jr.; Senator Karen Peterson; Ryan Tack-Hooper; Leon Tucker, on behalf of Secretary Patrice Gilliam-Johnson; Alan Grinstead, on behalf of Commissioner Robert Coupe

**Staff Present:** David Mangler, Patricia Davis, Meaghan Jerman

**Public Present:** Verity Watson, Joint Sunset Committee

**Call to Order**

Secretary Bullock called the meeting of the Delaware Professional Licensing Review Committee to order at 9:04 a.m.

**Review and Approval of Meeting Minutes**

The Committee reviewed the minutes of the May 25, 2016 meeting. Senator Peterson made a motion, seconded by Senator Hocker, to approve the minutes as written. By unanimous vote, the motion carried.

**Review of DPR Boards and Commissions and Board Compositions**

Mr. Mangler explained that his objective for the meeting was to obtain further direction from the committee so staff may work to accomplish some of the identified goals before the committee's next meeting. Mr. Manger suggested the committee consider holding their next meeting in August which would provide ample time for work to be completed and allow the Committee to make the most efficient use of their time together. This will also provide staff with the time needed to bring some draft recommendations for the committee's review.

Mr. Mangler provided multiple handouts for the committee's review including a listing of boards and commissions overseen by the Division of Professional Regulation (DPR), as well as those boards and commissions under Title 24 that are not under the Division's umbrella, a chart of professions and occupations regulated in the surrounding states, and DPR board composition and meeting frequency. Mr. Mangler first reviewed the DPR boards and commissions composition handout. He advised the

committee that he wanted to provide snapshot of the current ratio of professional to public members on each of the boards. He noted that while at a glance it appears to be a nice balance, there are a few boards, such as the Board of Funeral Services, that are not as well balanced. Mr. Mangler reminded the committee that each respective board's composition is described in detail within their statute. He explained this can often be a hindrance to finding applicable board members to serve on the board as the statutes can be written in very specific manners, down to the counties of residence of the board members. Senator Hocker explained that once the board has been established the legislature typically will not revisit the board's composition unless the recommendation comes from the board. Mr. Manger explained that currently a few boards have legislation before the general assembly concerning their board composition. The Board of Mental Health and Chemical Dependency Professionals are currently seeking to decrease the size of their board as it has been difficult to find professionals for the previously specified positions within the statute. Senator Peterson suggested the committee review the size of the profession with regard to the size of the board. Mr. Mangler noted that this is not always the most prudent method of determining board size, citing the California Board of Nursing which is smaller than Delaware's 15 member Board, despite having a much larger group of licensees. Mr. Mangler explained that when professional members on a board request additional representation he explains to the board that they are not a democratic body where there is equal representation based on the profession, and reminds them of the purpose of the board which is public protection, and with this thought it could be argued that there should be more public members on the boards. Ms. Davis explained that she does not like the concept of increasing public members on a board, as when a board's decision is appealed in court, the court will give deference to the boards as they are considered experts in the field. Increasing the public members on a board could impact this practice. Ms. Davis suggested, despite not being in total agreement with the concept, that one way the state can address the concerns of what was encountered in North Carolina by the State Board of Dentistry, is to give DPR statutory oversight into actions of the board so there is a state agency that can officially veto a decision of the board if needed.

Ms. Davis provided an overview of the case involving the North Carolina Board of Dentistry where the courts found that by defining the practice of dentistry to include teeth whitening there was an unfair infringement on free trade, as many businesses closed as a result. She explained that it was determined that in a situation where the majority of market participants (dentists in this case) have decided what defines the practice of the profession is a violation of the Federal Trade Commission's regulations on free trade. Ms. Davis explained it is important that we look at changing any questionable practices so Delaware is in compliance and does not encounter any similar issues. Mr. Mangler added that the North Carolina Board of Dentistry, unlike the boards under DPR, is independently administered, does not have any oversight, the professional members far outnumber the public members, and the board members are elected by their licensees. A key point to remember Mr. Mangler noted, is the board is responsible for determining initial requirements for licensure, as well as renewal requirements to maintain a license. The Board is ultimately responsible for regulating

the trade or profession.

Mr. Mangler informed the committee that the Board of Cosmetology currently has a bill awaiting the Governor's signature that will reduce their board size from 13 to 9 seats, while increasing the number of public member seats. Mr. Mangler explained that at one time the large size of the board was necessary as the board was responsible for administering the state examination; however the board no longer does this. There is now a national exam that is administered through a testing agency. Mr. Mangler asked if the committee was interested in reviewing board compositions to potentially include any identified suggestions for rebalancing within the committee's recommendations to the Governor. Mr. Mangler added this was important due to North Carolina's experiences, and also added that it can be helpful for purposes of ensuring a quorum is available to meet. Mr. Mangler explained that often the larger boards have a more difficult time obtaining a quorum as board members do not feel their absence will have an impact on the board's ability to meet. Unfortunately, when multiple board members on a board share this perspective, obtaining a quorum can become an issue. Senator Peterson requested the committee look at the size of the profession compared to the size of the board. Mr. Mangler agreed to gather this information and provide it to the committee for review at the next meeting.

Mr. Mangler directed the committee to review the handout on regulated professions, occupations, and trades, which compared occupations and professions regulated in Delaware, with those regulated in the surrounding states of Maryland, Pennsylvania, New Jersey, and New York. He noted that some of these occupations fall under a specific board, for example nail technicians are regulated by the Board of Cosmetology in Delaware. The document compared the existence of regulations for licensure in those surrounding states, and Mr. Mangler explained that Delaware compares similarly to these states. He noted of particular interest is electricians and plumbers in Pennsylvania and New York which are not regulated by the state, but by the various municipalities throughout the state. He explained this causes issues when they apply for licensure in Delaware as they must meet requirements that they have never had to meet before. Mr. Mangler shared the various municipalities are responsible for establishing what is required for licensure and this often varies from municipality to municipality as often the areas may have their own code to follow. He further explained if they are required to take and pass an exam it specific to that municipality. There is no state standard exam. Mr. Mangler also highlighted the inconsistencies in licensure of clinical social workers throughout the neighboring states. Delaware licenses clinical social workers who work independently and want to bill independently for insurance reimbursement, but no other social workers in Delaware are required to have a license, whereas in Pennsylvania all clinical social workers are required to have a license, and there are various tiers to licensure. Currently the Delaware Board of Social Work Examiners are identifying additional tiers for licensure and also exploring increasing the requirements for licensure, which will in turn increase the demand on educated social workers in the state. The National Association of Social Work Boards is currently working to eliminate the disparities between states. Mr. Mangler pointed out that

even though the states all license the profession, they all license differently.

Mr. Mangler asked the committee if there were any specific professions they would like to see in-depth analysis on. Secretary Bullock inquired where DPR sees the biggest challenges with obtaining licensure when endorsing from a nearby state. Mr. Mangler stated the most issues arise in Cosmetology, Electrical, Plumbing/HVAC, and Social Work. With regard to cosmetology, Mr. Mangler explained this is in large part due to the required number of training hours to become a cosmetologist differing from state to state. The educational programs and related hours of training in each state vary based on the state's regulations, and become an issue when one states educational hours are less than those required in Delaware. Mr. Paoli inquired about the impact of the licensure challenges on job creation and development within the state. Mr. Mangler shared that if a Pennsylvania plumber wants to begin working in Delaware they must prove that they meet the requirements for a journeyperson license and take a by-pass examination. The exam is only administered quarterly and in some instances applicants must wait another 2-3 months before the next exam is offered in Delaware, thus impeding their ability to begin working in the state. Mr. Mangler noted this is a large barrier to the profession and impacts the applicant financially as well.

Senator Peterson recalled an experience she had with a constituent in her district where the death of the father, who was also the master plumber in family owned plumbing business, resulted in the two sons, who had been plumbers for many years, being unable to work as they no longer had a master plumber overseeing them. Mr. Mangler added that this concern was addressed in the last legislative session as there had been an issue with the limited amount of time that an individual could obtain a permit until qualifying to take the master exam. Senator Peterson explained another challenge faced by individuals in similar situations is they have often not taken a test in many years, the test is considered difficult and must be completed on a computer which perhaps they have limited familiarity with using. She identified this as an artificial barrier and explained it is unfortunate that someone could not sit with them to assist them with this. Secretary Bullock explained that the Division currently doesn't have the ability to grant licensure based on experience and performance, but understands Senator Peterson's comments and concerns.

Secretary Bullock summarized that two of the main issues currently being discussed are around portability and licensing standards that are perhaps too rigid. Ms. Diogo suggested other professions consider temporary permits until an exam is available. Mr. Mangler questioned if perhaps there are occupations currently being regulated that do not need regulation such as barbering. Senator Peterson pointed out that cosmetology is distinct from barbering as it does involve chemicals.

Mr. Mangler advised that there have been groups in the past, and even very recently, who have wanted to be licensed for the purposes of reimbursement. This is most common, he explained, under the Board of Medical Licensure and Discipline. As a result of legislation, a committee is formed and

often these committees' meetings consist of only approving the previous meeting's minutes as there is no business to be discussed before the Board. Mr. Mangler explained licensure was required by the payers for reimbursement and recognition purposes. He explained there are alternate ways of regulating without a committee or board that involves establishing an administrative licensure process within the Division based on the statute. Mr. Madden inquired about the relationship between state licensure and insurance billing. Mr. Mangler explained that the insurers establish requirements that they recognize for reimbursement for the services provided and determined the person must have a state license. Secretary Bullock added that the insurance company wants to be satisfied that the professional is qualified. Ms. Gottschalk noted an experience with Applied Behavior Analysis (ABA) therapists where a law was passed requiring insurers to cover ABA therapy, but as it was not going to require professional licensure, Delaware Health and Social Services had to create regulations to define the criteria to become an ABA therapist for insurers. There was continued conversation regarding the relationship between the insurers and state licensure requirements. Ms. Davis clarified that when professions are seeking licensure, not imposed by the state, it is generally because there is a suggestion that professional licensure will allow insurers to pay for services. Mr. Mangler added this is a barrier created by the payers. Mr. Madden stated that he feels the insurance companies are passing the responsibility on to the state and is unclear why the state feels they need to take on this responsibility. Secretary Bullock explained the primary reason is so the services are available to our residents. If the services are not offered or covered in Delaware, the financial burden is passed on to the resident. Mr. Mangler added that annually the insurance companies inundate the Division with inquiries regarding licensure requirements for healthcare and human service fields. They use the state to do much of their credentialing work.

Mr. Mangler summarized the work moving forward will include looking at the 5 professions and occupations that have been identified as having the largest disparity, addressing the portability issues, and also reviewing where standards are possibly set too high and too rigid for some professionals with no history of discipline – professional or criminal. Senator Peterson suggested in instances where an exam is required for licensure, the board potentially recognize a very long apprenticeship for those who have many years of experience. Mr. Mangler shared that even after the completion of an apprenticeship, the board will still require the passing of the exam prior to licensure. He noted this identifies a good question in that - is the exam needed if an applicant has years of experience and someone consistently evaluating their work. Senator Hocker reiterated with plumbing and electrical work he finds it questionable why they would still need to take an exam if they have years of experience complying with the state code.

Mr. Tucker shared that it is apparent to him many of the professions have health and safety issues at the forefront. He questioned if it would be reasonable when considering what professions should be regulated that consideration be given to the impact these professions have on the public's health and public safety. He noted the profession of real estate as an example, did not seem to impact public

health and safety in the same manner as a barber would. He explained there is a concern with barbering on sanitation and cleanliness. Mr. Mangler clarified that DPR does not inspect for sanitation of facilities and that the Division of Public Health has authority over sanitation in barbershops, nail salons, etc. under Title 16. Those requirements would still exist even if they were not required to have a professional license. Senator Peterson pointed out that a real estate agent could also financially affect an individual. Mr. Mangler explained the statute refers to the protection of the health, safety, and welfare of the public. Economic wellbeing would fall under welfare. Senator Peterson shared the committee could consider even entry level requirements for licensure such as Real Estate Appraisers who are now required to have a Bachelor's degree which she feels is an artificial barrier as it limits those who may work on the profession and questioned if it was really necessary for the profession.

Mr. Mangler directed the committee to the final handout listing all the Boards and Commissions under Title 24. He reviewed other boards and commissions that are not regulated by DPR. He directed the committee to note the uniqueness of the Board of Professional Engineers. Mr. Mangler explained this board is a self-administered regulatory board with no oversight. He further explained their website is not a state website; they investigate their own profession, and elect their own board. They have no executive branch oversight. It would appear that they are perhaps at risk as they are structured similarly to the North Carolina Board of Dentistry. Secretary Bullock requested Ms. Davis bring a recommendation on this matter for discussion to the next meeting of the committee.

#### **Update on Substantially Related Crimes**

Mr. Mangler provided an update on the substantially related crimes work. The Board of Cosmetology is currently working on reducing their list, as well as the plumbing and electrical boards. Mr. Mangler advised that he met with Representative Mulrooney concerning his draft bill related to decreasing the waiting period for felony convictions. He was unclear if a bill would be introduced and anticipated there would be a significant discussion if this bill gained movement. Secretary Bullock inquired if the boards had restrictions for individuals on parole. Mr. Mangler advised that at this time the board cannot grant waivers for anyone on probation and parole for any of the crimes on their respective lists. Secretary Bullock shared that he feels the waiver process is cumbersome and those individuals on the lowest level of probation are basically on an administrative level. Mr. Mangler explained that there may need to be a conversation about inclusion of level 2 probation and what it would mean if it was included. Mr. Madden clarified if the lower level of probation is associated with lower risk due to the nature of the crime and he questioned how we determine risk. Currently the statute requires 5 years to have passed from the date of the conviction of the crime. Mr. Tack Hooper inquired if the intent was to offer guidance to the boards who are reviewing their list of crimes from the committee. Mr. Mangler said he could do that, but many boards are already at the point where they are prepared to publish proposed regulation changes. Senator Peterson advised the committee that there is currently a proposal for the Senate to sign a resolution that would freeze the promulgation of regulations by DPR until the recommendation of the committee has been published. She inquired how the committee felt

about putting a moratorium on DPR regulation promulgation until the committee's work concluded. Mr. Mangler and Ms. Davis shared that they could advise the boards to slow down their work and not complete any proposed regulation hearings until the committee makes their final recommendation. The committee requested the Division not promulgate any regulations until the final recommendations of the committee are published. Mr. Tack-Hooper inquired about what the top three most common categories of conviction found on the list would include. He anticipates it would include drug offenses and low level assaults. Secretary Bullock explained that he would like to see the crime lists for all professions under the Division.

Mr. Paoli offered that in his experience many commercial clients require a background check and drug test for employees prior to beginning an electrical job. He explained the licensee may be able to obtain a license, but still not be cleared to work on a job due to their criminal history. This is an additional barrier faced by certain professions. Mr. Mangler added that these individuals may not be able to work in certain settings such as schools or hospitals due to their previous criminal history.

#### **White House White Paper – “Occupational Licensing: A Framework for Policymakers”**

Mr. Mangler provided a handout “Occupational Licensing: A Framework for Policymakers”. He explained this was the abstract of the white paper, but full copies of the document are available if anyone wanted a copy. He noted the document questions regulatory framework for purely reimbursement purposes. It also recommends lower level regulation with low level risk professions and trades. It stated that licensure should be the highest regulation around high risk professions such as physicians and nurses.

#### **Public Comment**

There was no public comment.

#### **Next Meeting Date**

The Committee agreed to hold their next meeting in late August to provide adequate time for the work to be completed. Secretary Bullock suggested the Committee meet at Buena Vista Conference Center in New Castle. Ms. Jerman will follow up with Committee members with the next meeting date.

#### **Adjournment**

With no further discussion, the Committee adjourned at 10:30 a.m.